



DePaul Journal for Social Justice

Volume 11
Issue 2 *Summer 2018*

Article 4

August 2018

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Recommended Citation

Neda Shaheen, *Discriminatory Nationality Laws Must Be Eliminated In Order To Eradicate Statelessness*, 11 DePaul J. for Soc. Just. (2018)
Available at: <https://via.library.depaul.edu/jsj/vol11/iss2/4>

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DISCRIMINATORY NATIONALITY LAWS MUST BE ELIMINATED IN ORDER TO ERADICATE STATELESSNESS

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Abstract: A woman's right to retain her own nationality, particularly after she is married, affects her right to be represented by the state under international law, and affects her ability to transmit that right to her children. Under the Convention on the Elimination of All Forms of Discrimination Against Women, Article 9 requires that "state parties grant women equal rights with men to acquire, change, or retain their nationality." States that violate or make reservations to Article 9 discriminate against women by denying them the ability to pass nationality to their children and foreign spouse, creating barriers to education, work, travel, and active participation in public life. This paper is divided into four parts. First, an overview and definition of nationality. Second, how discriminatory nationality laws violate international law. Third, how discriminatory nationality laws contributes to gender-based violence. And fourth, suggestions on combating discriminatory nationality laws.

I. AN OVERVIEW OF NATIONALITY

A. Introduction

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A woman's right to retain her own nationality, particularly after she is married, affects her right to be represented by the state under international law, and affects her ability to transmit that right to her children.¹ Under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 9 requires that "state parties grant women equal rights with men to acquire, change, or retain their nationality."² States that violate or make reservations to Article 9 discriminate against women by denying them the ability to pass nationality to their children and foreign spouse, creating barriers to education, work, travel, and active participation in public life.³ A reservation is a statement made a state party upon ratification or acceptance of a treaty to modify, exclude or limit obligations to specific provisions in a treaty, as applied to that state.⁴ Reservations to Article 9 of CEDAW reinforce stereotypes of women's role and undermine the objective and purpose of CEDAW as a whole, violating Article 18 of the Vienna Convention on the Law of Treaties.⁵ In effect, discriminatory nationality laws not only violate international law, but also impede economic development by inhibiting a considerable portion of the population from contributing to the economy.

Although several treaties have attempted to make equal nationality laws, they cannot be implemented without the state's support. Civil society must advocate for the right to citizenship and nationality-law reform. As an international community, it is our duty to give a voice to women who are deprived of equal nationality rights and forced out of public sight. This paper is divided into four parts. The first section of this paper is an overview of nationality, which will define what nationality means for this paper and explain the importance of the legal recognition nationality provides. The second section of this paper shows how discriminatory nationality laws are a violation of international law. This section will explain nationality laws specifically for women, give a history of these laws, and explain how a lack of nationality results in economic inefficiency and statelessness. The third section of this paper focuses on how discriminatory nationality laws contribute to the spread of gender-based violence. The fourth section will make suggestions to combat discriminatory nationality laws, followed by concluding remarks.

B. Defining Nationality

¹ Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L 643, 693 (1990).

² Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 21) (A/34/46), UN Doc. A/RES/34/190 (entry into force Sept. 3, 1981).

³ Addressing the Human Rights Impact of Statelessness in EU's External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 9 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

⁴ See generally, Guide to Practice on Reservations to Treaties, Section 1 (2011)

⁵ Vienna Convention on the Law of Treaties art. 18, Jan. 27, 1980, 1155 U.N.T.S. 336 ("A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed").

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International law governs state action and provides the state with authority to make diplomatic claims on behalf of its nationals.⁶ It is the individual's genuine link to the state through recognized nationality that secures the state's obligation to protect him or her.⁷

For the purpose of this paper, nationality is defined as "the formal legal status of an individual who is member to a specific state."⁸ It is important to note that nationality differs significantly from ethnicity; nationality is a legal right, whereas ethnicity is an identity based on language, history, and values.⁹ In regard to nationality laws, ethnic discrimination is very different from gender discrimination.¹⁰ While ethnicity identifies an individual's social group, nationality secures the rights of the individual in their state. In other words, nationality is the "right to have rights."¹¹ As such, gender-specific nationality laws eliminate half the population's full and equal right to have rights in the state.

Nationality may be obtained by naturalization, but it is solely within the state's discretion to determine how non-nationals may acquire citizenship.¹² Naturalization is considered a legal process by which states consider factors for accepting aliens as citizens, taking into account the individual's primary language, religion, place of birth, connections to the state, finances, ethnicity, existing nationality and sex.¹³

Generally, nationality laws are categorized by two principals: *jus soli* (right of the soil), and *jus sanguinis* (right of blood).¹⁴ In a country where *jus soli* is the law, anyone born in the territory of the state is a national and has the right of birthright citizenship.¹⁵ In a minority of areas, *jure soli* (after birth) citizenship grants citizenship to children of the state only after the age of 18¹⁶ Only

⁶ See generally Alex M. Johnson, Jr., *Destabilizing Racial Classifications Based on Insights Gleaned From Trademark Law*, 84 CAL. L. REV. 887, 891 (1996).

⁷ *Id.* at n. 98.

⁸ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillian: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 536 (2001).

⁹ See generally Alex M. Johnson, Jr., *Destabilizing Racial Classifications Based on Insights Gleaned From Trademark Law*, 84 CAL. L. REV. 887, 891 (1996).

¹⁰ *Id.*

¹¹ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillian: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 536 (2001) citing *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, C.J., dissenting) ("Citizenship is man's basic right for it is nothing less than the right to have rights.").

¹² Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillian: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 543 (2001).

¹³ *Id.*

¹⁴ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillian: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 536 (2001); David Weibrod & Clay Collins, *The Human Rights of Stateless Persons*, 28.1 HUM. RTS. W. 245, 254 (2006).

¹⁵ David Weibrod & Clay Collins, *The Human Rights of Stateless Persons*, 28.1 HUM. RTS. W. 245, 254 (2006).

¹⁶ Maarten P. Vink & Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe*, 33, EUR. U. INST. EDU CITIZENSHIP OBSERVATORY (2010),

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30 states practice true *jus soli* citizenship; the United States is one of them.¹⁷ By contrast, no European country grants birthright citizenship. Rather, the European Convention on Nationality requires at least one parent to be a citizen or permanent resident of the state they are declaring nationality.¹⁸

True *jus sanguinis*, on the other hand, selectively grants citizenship to children by paternal descent.¹⁹ In countries with *jus sanguinis* nationality laws, women cannot independently pass nationality onto their children. Further, if a woman marries a stateless person or a foreign spouse, she may not pass her nationality to that person or their children.²⁰ In a true *jus sanguinis* system, even a woman who has children with a man of her own nationality risks stateless children if the children are born out of wedlock or if the father denies paternity.²¹ By effect, “*jus sanguinis* laws not only produce statelessness, they can perpetuate statelessness from one generation to the next.”²²

Because of the recent movement of immigrants, the modern trend is moving against birthright citizenship by applying a combined *jus soli* and *jus sanguinis* approach. For example, traditionally *jus soli* nations, such as Ireland, are placing residency requirements on both men and women.²³ Every person born in Ireland is entitled to Irish citizenship, provided at least one parent has lived in Ireland for three years.²⁴ Although these laws limit nationality rights, they remain gender-neutral and allow all parents to pass nationality to their children after a period of time.²⁵

Countries defend discriminatory practices using cultural relativism, even going so far as to claim that these practices protect women, “members of the weaker sex—from cultural backlash and

<http://cadmus.eui.eu/bitstream/handle/18>

[14/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/18/14/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y).

¹⁷ John Feere, *Birthright Citizenship in the United States: A Global Comparison*, CENTER FOR IMMIGRANT STUDIES (2010), <https://cis.org/Birthright-Citizenship-United-States>.

¹⁸ Maarten P. Vink & Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe*, 33, EUR. U. INST. EDU CITIZENSHIP OBSERVATORY (2010), <http://cadmus.eui.eu/bitstream/handle/18>

[14/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/18/14/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y).

¹⁹ David Weibrod & Clay Collins, *The Human Rights of Stateless Persons*, 28.1 HUM. RTS. W. 245, 254 (2006).

²⁰ *Id.*

²¹ *Id.*

²² Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 58 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

²³ Maarten P. Vink & Gerard-René de Groot, *Birthright Citizenship: Trends and Regulations in Europe*, 33, EUR. U. INST. EDU CITIZENSHIP OBSERVATORY, 21 (2010), <http://cadmus.eui.eu/bitstream/handle>

[/1814/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/19578/Vink%26DeGroot.pdf?sequence=1&isAllowed=y).

²⁴ *Id.*

²⁵ *Id.*

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confusion.”²⁶ This is because, historically, women have been viewed as a burden on the state and unworthy of citizenship without the appendage of a husband.²⁷ Nevertheless, patriarchal views must be eliminated. Discriminating against a group for arbitrary reasons hurts the global community by not allowing capable individuals to make full contributions to everyday life in the global economy.²⁸ In other words, discrimination against women in nationality is not only unfair, as well as violation of international law, it is also a form of “economic inefficiency—a massive, systematic misallocation of human resources.”²⁹

C. The Importance of Legal Recognition

A state is not obligated to protect an individual who is not documented as a national within the state.³⁰ Without state obligations, individuals without nationality are at serious risk for exploitation, including human rights violations by the government in the territory in which they live.³¹ Nationality is the link through which an individual enjoys the benefits and protections of domestic and international law.³² Without nationality, individuals are often subject to arbitrary detention, as they cannot be arrested without an identification card, nor can they be released or deported, because they completely lack immigration status.³³

Without nationality rights, individuals are ineligible for government support, including any form of welfare or social security, disability funds, or medical care.³⁴ The UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) issued General Recommendation 21, which states that “Nationality is critical to full participation in society... without status as nationals or citizens, women are deprived public benefits and a choice of residence.”³⁵ General Recommendation 21 warns that, “Without status as nationals or citizens,

²⁶ *Id.* at 697.

²⁷ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 544 (2001).

²⁸ David Futrelle, *Discrimination Doesn't Make Dollars, or Sense*, TIMES, Feb. 19, 2013, <http://business.time.com/2013/02/19/discrimination-doesnt-make-dollars-or-sense/>.

²⁹ *Id.*

³⁰ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 539 (2001).

³¹ Addressing the Human Rights Impact of Statelessness in EU's External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 9 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

³² *Problems of Peace and War, Papers Ready Before the Society in the Year 1942*, 28 TRANSACTIONS IN A GROTIUS SOC'Y 152 (1942).

³³ *Id.* at 151-52.

³⁴ Addressing the Human Rights Impact of Statelessness in EU's External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 8-9 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

³⁵ Committee on the Elimination of Discrimination against Women on Its Thirteenth Session, U.N. GAOR, 49th Sess., U.N. Doc. A/49/38 1, 2 (1994).

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women are deprived of the right to vote or to stand for public office and may be denied access to public benefits and a choice of residence.”³⁶

Women who are denied individual nationality are deprived of identity documents, which prohibits them from actively participating in most of public life.³⁷ They are completely unable to sign contracts, which affects property rights, employment, and financial services.³⁸ They are unable to carry identification cards, which means they cannot apply for passports or legally cross borders.³⁹ Without legal recognition, stateless people live in the shadows where they are unable to work, pay taxes, run for public office or lobby for change in their areas. Women are more vulnerable to becoming stateless in countries with true *jus sanguinis* nationality laws, where divorce or becoming widowed may strip a woman of her own identity and nationality. In addition, women are more vulnerable to becoming stateless in conflict-afflicted areas, where papers are often destroyed. Women are also vulnerable to statelessness in cases of human trafficking, where identities are taken. Although it is difficult to find statistics on statelessness, it is estimated that women make up 71-78% of the world’s stateless population.⁴⁰

The all-encompassing discrimination that follows a lack of nationality affects women in every aspect of their lives, as well as the global community at large. Keeping laws that inhibit stateless people — the majority of whom are women — from equal education and opportunity also inhibits women from participating in developing the economy.⁴¹ The Fourth World Conference on Women in Beijing passed the Beijing Declaration and Platform for Action addressed this, declaring:

Insufficient attention to gender analysis has meant that women’s contributions and concerns remain too often ignored in economic structures, such as financial markets and institutions, labor markets, economics as an academic discipline, economic and social infrastructure, taxation and social security systems, as well as in families and households. As a result, many policies and programs may continue to contribute to inequalities between women and men. Where progress has been made in integrating gender perspectives, program and policy

³⁶ *Id.*

³⁷ U.N. Div. for the Advancement of Women, *Women, Nationality and Citizenship*, Women 2000 & Beyond, 4 (June 2003).

³⁸ Addressing the Human Rights Impact of Statelessness in EU’s External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 17 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

³⁹ U.N. Div. for the Advancement of Women, *Women, Nationality and Citizenship*, Women 2000 & Beyond, 4 (June 2003).

⁴⁰ Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 60 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

⁴¹ The Fourth World Conf. on Women Having Met in Beijing, *Beijing Declaration and Platform for Action*, Women and the Economy, 155 (Sept. 15, 1995).

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effectiveness has also been enhanced.⁴²

If countries cannot agree to amend gender-specific equality laws on the basis of gender discrimination, then they should be able to do so through an equitable and economic justification. It is important to have legal recognition for concepts of fairness in order to efficiently utilize the world's best talents to keep the global economy rising. Legal recognition gives women the opportunity to attend school and work in fields that they may one day revolutionize, if only given the chance. At the same time, women who choose not to attend school or the labor force would still be able to participate in public life, pay taxes, and invest in domestic and global markets.

Although there is limited data on the matter, a link exists between levels of gender inequality and economic outcomes.⁴³ Because the majority of stateless people are women, the correlation between gender inequality and low development needs to be addressed when addressing economic development. According to the United Nations High Commissioner for Refugees, "Identifying and addressing the risks of statelessness could have a positive impact in allowing for larger swathes of society to participate fully in a country's economic and social development."⁴⁴

II. DISCRIMINATORY NATIONALITY LAWS AS A VIOLATION OF INTERNATIONAL LAW

A. *International Nationality Laws for Women*

Article 9 of CEDAW highlights a woman's right to nationality, stating:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.⁴⁵

Article 9 stands in place to protect a woman's independent nationality. However, many states have made reservations to this article or violated it using a false justification based on cultural relativism.⁴⁶ Cultural relativism would accept cultural traditions in violation of human rights and argue that certain practices have legitimate value within a community (e.g. female genital

⁴² *Id.*

⁴³ Oriana Bandiera & Ashwini Natraj, *Does Gender Inequality Hinder Development and Economic Growth? Evidence and Policy Implications*, 28 THE WORLD BANK POL'Y RESEARCH 6 (Feb. 2013).

⁴⁴ The U.N. High Commercial for Refugees, *Why States Should Accede to the 1954 and 1951 Statelessness Conventions 2*.

⁴⁵ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 21) (A/34/46), UN Doc. A/RES/34/190 (entry into force Sept. 3, 1981), <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>.

⁴⁶ Stephanie Palo, *Still Citizens After Marriage: Exploring Violations of Women's Nationality Rights*, 30 WOMEN'S RTS. L REP. 673, 679 (2009).

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mutilation is highly contested as a legitimate practice with cultural significance).⁴⁷ In other words, cultural relativism assumes that “human rights are good for people in some parts of the world but irrelevant elsewhere.”⁴⁸ However, international human rights law presumes all cultures apply the same minimal standards of protection and human dignity,⁴⁹ thus, “[s]ubordinating human rights to cultural traditions disables the international community from enforcing these rights so that all people... may enjoy them.”⁵⁰

Notably, a married woman’s right to nationality is established through the Universal Declaration for Human Rights, the Convention on the Nationality of Married Women, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights.⁵¹ Article I of the Convention on the Nationality of Married Women specifically states that a woman’s nationality cannot be automatically affected by marriage to a foreign spouse.⁵² Article II of the Convention continues to state that the acquisition or renunciation of a nationality by a husband does not automatically affect the wife’s own nationality.⁵³

Regional treaties, such as The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, are weak on addressing gender-neutral nationality laws and only provide that, “a woman shall have the right to retain her nationality or to acquire the nationality of her husband.”⁵⁴ Although the Protocol claims that men and women shall have equal rights with respect to the nationality of their children, it creates an exception for national legislation, essentially making this provision optional.⁵⁵

To directly combat statelessness overall, the 1965 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness contain provisions meant to ensure stateless persons a minimum set of human rights. Although not all stateless people are women, women are the majority of stateless people and are the most adversely affected by statelessness.⁵⁶ Despite their goal of preventing statelessness, neither of these treaties directly

⁴⁷ Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 Law & Ineq. 367, 368-70 (1989)

⁴⁸ Hillary Charlesworth & Christine Chinkin, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 225 (2000).

⁴⁹ Katherine Brennan, *The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study*, 7 Law & Ineq. 367, 371 (1989)

⁵⁰ Stephanie Palo, *Still Citizens After Marriage: Exploring Violations of Women’s Nationality Rights*, 30 WOMEN’S RTS. L REP. 673, 679 (2009).

⁵¹ EQUALITY NOW, *CAMPAIGN TO END SEX DISCRIMINATION IN NATIONALITY & CITIZENSHIP LAWS* (2014).

⁵² Convention on the Nationality of Married Women, 309 U.N.T.S. 65, U.N. Doc. A/RES/1040 (XI) (entry into force August 11, 1958).

⁵³ *Id.*

⁵⁴ African Commission on Human and People’s Rights, *The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa*, art. 6, (2003).

⁵⁵ *Id.*

⁵⁶ Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women*

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protects a woman's right to nationality, nor do they target discrimination against stateless women directly. In addition, neither of these treaties are as widely ratified as CEDAW, which provides the greatest protection to women facing discriminatory nationality practices.

B. History of International Nationality Laws for Women

In many states, discriminatory nationality laws were inherited from former colonial powers.⁵⁷ Prior to World War I, most state nationality laws made a married woman's nationality dependent on her husband's nationality.⁵⁸ In other words, the idea of women having individual nationality is still new to much of the world today. Only a decade before the Universal Declaration of Human Rights, Virginia Wolfe famously critiqued restrictive laws against married women in early 20th century Britain when she said, "As a woman I have no country. As a woman I want no country. As a woman my country is the whole world."⁵⁹ Recently, reforms have been undertaken in several countries, including Madagascar (2017), Senegal (2013), Yemen (2010), Kenya (2010), Morocco (2007), Indonesia (2006) and Egypt (2004), among others.⁶⁰ However, as the feminist movement has progressed into the 21st century, it is intolerable that women are still fighting today for these rights with the same critiques raised by Wolfe almost a century ago.

The United Nations Commission on the Status of Women (the Commission) was established in 1946 as functional body of the United Nations Economic and Social Council (ECOSOC) to promote, report on, and monitor issues relating to the political, economic, civil, social and educational rights of women.⁶¹ In contributing to the Universal Declaration of Human Rights (UDHR), the Commission specifically addressed the issue of nationality and citizenship by drafting Article 15 to say, "(1) *everyone* has the right to a nationality and (2) no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."⁶² At the time, using gender-neutral language, "*everyone*," to address nationality was a victory for advocates battling statelessness.⁶³ That being said, it should be noted that Article 15(2) uses a gender-specific "*his*" to reference deprivation and modification of nationality. Still, the UDHR is not binding on states, and, although it provided a platform for women combatting discrimination against nationality, the UDHR did not have a legal effect on nationality. In 1958, the Commission drafted The Convention on the Nationality of Married Women, which reaffirmed a woman's right to her individual nationality, before and during marriage, as well as after

1, 55 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

⁵⁷ UNHCR, *Background Note on Gender Equality, Nationality Laws & Statelessness* (2017).

⁵⁸ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 544-45 (2001).

⁵⁹ VIRGINIA WOLFE, *THREE GUINEAS*, 99 (1938).

⁶⁰ UNHCR, *Background Note on Gender Equality, Nationality Laws & Statelessness* (2017).

⁶¹ Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L 643, 663-664 (1990); Stephanie Palo, *Still Citizens After Marriage: Exploring Violations of Women's Nationality Rights*, 30 WOMEN'S RTS. L. REP. 673, 674 (2009).

⁶² Universal Declaration of Human Rights (UDHR), Dec. 12, 1948, art. 15, G.A. Res. 217A, 3d Sess. U.N. Doc A/810.

⁶³ Rebecca J. Cook, *Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT'L 643, 693 (1990).

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divorce.⁶⁴ Although the Convention on the Nationality of Married Women was a huge step forward, it was not a widely ratified treaty.

To emphasize the need for women's rights and women's equality, the U.N. issued the Declaration on the Elimination of Discrimination Against Women (Women's Declaration) in 1967.⁶⁵ The Women's Declaration was not legally binding, but it emphasized the importance for women to have the same rights as men in a broader but still stringent way, which eventually led to CEDAW. Article 5 of the Women's Declaration declares that, "women shall have the same rights as men to acquire, change or retain their nationality."⁶⁶ This language was repeated word for word in CEDAW's Article 9, which *is* legally binding.⁶⁷

CEDAW was much more successful than other women's treaties. For example, since 1957 only 74 states have ratified the Convention on the Nationality of Married Women,⁶⁸ but since 1979 CEDAW has been ratified by 189 states.⁶⁹ This means that 189 states have the legal obligation to give women equal rights with men to "acquire, change or retain their nationality."⁷⁰ However, 21 state parties to CEDAW have reservations to Article 9, thereby refusing to adopt gender-equal nationality law and adding to the gender inequality affecting the international economy.

C. Inability to Claim Nationality – Statelessness

It is necessary to combat statelessness because:

...the instability created by statelessness makes reducing statelessness in the best interest of regions or regional organizations such as the European Union or the

⁶⁴ Convention on the Nationality of Married Women, 309 U.N.T.S. 65, U.N. Doc. A/RES/1040 (XI) (entry into force August 11, 1958), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en.

⁶⁵ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523 (2001).

⁶⁶ Declaration on the Elimination of Discrimination Against Women, Nov. 11, 1967, U.N. Doc. A/RES/2263, <https://documents-ddsny.un.org/doc/RESOLUTION/GEN/NR0/235/98/IMG/NR023598.pdf?OpenElement>.

⁶⁷ Convention on the Elimination of All Forms of Discrimination Against Women, art. 9, 18 December 1979, 34 UN GAOR Supp. (No. 21) (A/34/46), UN Doc. A/RES/34/190 (entry into force 3 September 1981), <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>.

⁶⁸ Convention on the Nationality of Married Women, 309 U.N.T.S. 65, U.N. Doc. A/RES/1040 (XI) (entry into force August 11, 1958), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XVI-2&chapter=16&Temp=mtdsg3&lang=en.

⁶⁹ *Id.*

⁷⁰ Convention on the Elimination of All Forms of Discrimination Against Women, art. 9, 18 December 1979, 34 UN GAOR Supp. (No. 21) (A/34/46), UN Doc. A/RES/34/190 (entry into force 3 September 1981), <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>.

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Organization of American states, regional relations are often improved when states work to eliminate statelessness and to resolve national disputes.⁷¹

Globally, an estimated ten million people are stateless.⁷² It is important to remember that to be stateless is very different than to be a refugee. The UN defines someone who is stateless as someone “who is not considered as a national by any state under the operation of its law.”⁷³ “Refugee”, by contrast, is a legal status in itself.⁷⁴ Unlike refugees, stateless people do not have a legal status and they are not always displaced; in fact, most stateless people have never left the place they live.⁷⁵ In other words, there are refugees who are stateless people, but not all stateless people are refugees.⁷⁶

The unequal treatment of women in nationality laws puts women at a higher risk for statelessness by making it so women can be both *born* stateless and also *become* stateless.⁷⁷ As discussed above, women are often born stateless in a *jus sanguinis* system. At the same time, women are born stateless in countries where birth registries are overlooked and people are unable to receive proper documentation proving their place of birth.⁷⁸

Conversely, women become stateless when their documents are lost or stolen during conflicts and they are unable to prove their nationality.⁷⁹ Many people in post-colonial nations or in divided nations are left stateless after complete shifts in government. For example, dissolution and violence in the former Yugoslavia left thousands of families without any documentation or ability to prove their origin.⁸⁰ In cases of human trafficking, a woman’s documentation is often

⁷¹ David Weibrod & Clay Collins, *The Human Rights of Stateless Persons*, 28.1 HUM. RTS. W. 245, 275 (2006).

⁷² The UN Refugee Agency, *UNHCR Mid-Year Trends 2014*, at 10 (this statistic does not include stateless refugees), www.unhcr.org/54aa91d89.html.

⁷³ Convention Relating to the Status of Stateless Persons, art. 1, Sept. 28, 1054, 360 U.N.T.S. 136 (entry into force June 6, 1960).

⁷⁴ Addressing the Human Rights Impact of Statelessness in EU’s External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 9-10 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

⁷⁵ Addressing the Human Rights Impact of Statelessness in EU’s External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 9 (2014), [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

⁷⁶ *Id.* at 10.

⁷⁷ Patricia Schulz, Swiss Member of CEDAW Committee, Gender-Related Dimensions of Refugee Status, Asylum and Statelessness, Speech delivered at CEDAW: 30 Years of Working for Women’s Rights, Istanbul November 1-3, 2012).

⁷⁸ U.N. Div. for the Advancement of Women, *Women, Nationality and Citizenship*, Women 2000 & Beyond, 4 (June 2003).

⁷⁹ *Id.*

⁸⁰ Gazela Pudar (U.N. High Commissioner for Refugees), *Persons at Risk of Statelessness in Serbia* (June 2011).

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destroyed or confiscated in order to prohibit her from proving her country of origin, which can effectively strip her of her nationality, thereby depriving her of legal protection.⁸¹

By making reservation to CEDAW's Article 9, states exacerbate the number of stateless people in the world today. Although a reservation to Article 9 does not immediately result in statelessness, allowing for gender-based nationality laws puts women at greater risk for statelessness.⁸² In countries with nationality laws that specifically discriminate against women, a woman's nationality is often directly linked to her husband's.⁸³ States with reservations to Article 9 of CEDAW use the excuses of culture and family solidarity to avoid amending their laws.⁸⁴ Cultural relativism subordinates human rights and the excuse of family solidarity does not explain why women must abandon their individuality to assimilate to their husband's, particularly if they have no children.⁸⁵ Despite their reasoning, states that force married women to relinquish their nationality and acquire the nationality of their husbands reinforce stereotypical ideals about men as leader of the household.⁸⁶ In cases of divorce, a woman not only severs ties with her husband but also with his nationality, which may strip her of her status and leave her stateless.⁸⁷ This occurs regardless of if she was a national before the marriage, and is a violation of the fundamental human right to nationality, which has been established numerous times in international treaties, declarations, conferences, and throughout various domestic constitutions.

What is more troubling is that the same laws that deprive women of their nationality rights also prevent them from obtaining political power to mobilize change.⁸⁸ Laws that hold that a woman's national identity is solely dependent on her husband's national identity solidify her position as a second-class person.⁸⁹ She is unable to get an ID card or any identifying documents, open a bank account, own property, apply for a passport, or enroll in a university.⁹⁰ A woman who faces the risk of statelessness is invisible.

⁸¹ U.N. Div. for the Advancement of Women, *Women, Nationality and Citizenship*, Women 2000 & Beyond, 4 (June 2003).

⁸² Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 53 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

⁸³ Patricia Schulz, Swiss Member of CEDAW Committee, Gender-Related Dimensions of Refugee Status, Asylum and Statelessness, Speech delivered at CEDAW: 30 Years of Working for Women's Rights, Istanbul November 1-3, 2012).

⁸⁴ Stephanie Palo, *Still Citizens After Marriage: Exploring Violations of Women's Nationality Rights*, 30 WOMEN'S RTS. L REP. 673, 677 (2009).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Patricia Schulz, Swiss Member of CEDAW Committee, Gender-Related Dimensions of Refugee Status, Asylum and Statelessness, Speech delivered at CEDAW: 30 Years of Working for Women's Rights, Istanbul November 1-3, 2012).

⁸⁸ Stephanie Palo, *Still Citizens After Marriage: Exploring Violations of Women's Nationality Rights*, 30 WOMEN'S RTS. L REP. 673, 688 (2009).

⁸⁹ *Id.*

⁹⁰ The UN Refugee Agency, *UNHCR Stateless People*, www.unhcr.org/pages/49c3646c155.html (last visited Nov. 8, 2015).

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Nationality laws are predominantly seen as a women's rights issue, as the laws intentionally discriminate against women, but it should be noted that statelessness affects our international community at large. Women can often end the cycle of statelessness by marrying a man who is a citizen, and their children will be born nationals if he claims paternity. However, even marriage to a spouse who is a citizen does not guarantee a woman's right to nationality, as the state's discretion over naturalization may still prohibit this right in some circumstances.⁹¹

On the other hand, most stateless men do not have the option of ending their statelessness through marriage if the state only permits men to pass nationality to their female spouse.⁹² Stateless men are often rejected in marriage, as they are unable to secure a possible child's right to existence in the state.⁹³ This means that although nationality laws discriminate against women, they directly affect the entire family unit. The longer states overlook the issue of statelessness by continuing to practice gender-discriminating nationality procedures, the more they aggravate the problem and allow a cycle of stateless women having stateless children to continue. States should tackle the issue of statelessness if for no other reason than that it is to a state's advantage that legislation is drafted to reform gender-specific nationality laws to break this cycle and identify capable people who can contribute to their economic development.⁹⁴

III. DISCRIMINATORY NATIONALITY LAW AND GENDER-BASED VIOLENCE

Governments that systematically integrate discriminatory measures into their function elevate the opportunity for gender-based violence.⁹⁵ The inability to obtain or receive legal status elevates the risk of domestic violence, as a lack of protection allows for greater control over a non-citizen spouse.⁹⁶ By withholding the ability to claim any status in the state of residence, the non-citizen

⁹¹ Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, AFRICA GOVERNANCE MONITORING & ADVOCACY PROJECT (AfroMAP) 47 (Open Society Justice Initiative 2d ed., 2010).

⁹² Mark Manly et. al, *Statelessness: The Impact of International Law and Current Challenges*, 4, CHATHAM HOUSE: THE ROYAL INSTITUTE OF INT'L AFFAIRS (2014).

⁹³ Addressing the Human Rights Impact of Statelessness in EU's External Action, Directorate General for External Policies of the Union, EUR. PARL. DOC. PE 534.983 1, 9 (2014),

[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU\(2014\)534983_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534983/IPOL_STU(2014)534983_EN.pdf).

⁹⁴ See generally The United National High Commissioner for Refugees, *The Statelessness Conventions Campaign Why States Should Acceded to the 1948 and 1961 Statelessness Conventions*, <http://www.refworld.org/pdfid/4cb6b2052.pdf>.

⁹⁵ Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 536 (2001).

⁹⁶ *Id.*

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spouse is at risk for emotional, physical, and sexual abuse while at the same time constantly being threatened with deportation or arbitrary imprisonment.⁹⁷

Although statelessness does not always result in gender-based violence, stateless women are more vulnerable to it because of the lack of security and opportunity that follows.⁹⁸ Without education or a way to enter the labor force, stateless women desperately seek measures to survive and often resort to prostitution, risking physical abuse, sexual exploitation, sexual assault, abduction or disappearance.⁹⁹ As these crimes continue to elevate, the economic impact of gender-based violence stemming from statelessness cannot be ignored.¹⁰⁰ The substantial impact of such violence on economic growth is, in part, why gender-based violence has been called “one of the most expensive public health problems globally.”¹⁰¹

Not only can statelessness be exploited by physically abusive spouses, it can also be used to motivate families into taking extreme measures to gain status.¹⁰² Families may choose to marry off young girls in early or forced marriages in order to resolve their inability to obtain citizenship.¹⁰³ For example, when lacking Lebanese nationality, Lebanese families will often marry off their adolescent daughters so that they may gain citizenship through their new husbands and hopefully have more opportunities with the benefit of legal recognition.¹⁰⁴

These violations of human rights all intertwine, and they negatively affect both individuals as well as the state’s full ability to develop into a stable and productive society.¹⁰⁵ After the Fourth World Conference on Women, the Beijing Platform for Action expanded the definition of gender-based violence to specifically include the vulnerable refugee women from disfavored communities, because it is a horrific crime, and also because it impedes development in the state

⁹⁷ *Id.*

⁹⁸ Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 44 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

⁹⁹ *Id.*

¹⁰⁰ *Too Costly to Ignore – The Economic Impact of Gender-Based Violence in South Africa*, KPMG (2014), <https://assets.kpmg.com/content/dam/kpmg/za/pdf/2017/01/za-Too-costly-to-ignore.pdf>.

¹⁰¹ *Id.*

¹⁰² Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 58 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

¹⁰³ *Id.*

¹⁰⁴ See EQUALITY NOW, *Lebanon: Give Women Equal Citizenship Rights to Men Under Nationality law*, (June 12, 2010) <https://www.equalitynow.org/action-alerts/lebanon-give-women-equal-citizenship-rights-men-under-nationality-law>.

¹⁰⁵ United Nations Economic Commission for Africa (UNECA) & Africa Centre for Gender and Social Development (ACGS), *Violence Against Women in Africa: A Situational Analysis* (2010), <http://www1.uneca.org/Portals/awro/Publications/21VAW%20in%20AfricaA%20situational%20analysis.pdf>.

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overall.¹⁰⁶ Although states are actually allocating large funds for healthcare, judicial services, and social services for victims of gender-based violence, it is also important to account for the indirect impact of gender-based violence.¹⁰⁷ Studies have shown that women who experience violence would earn more if they were not victimized. Moreover, stateless women are often exploited, and it is necessary to account for the amount of unpaid work and lifetime of lost earnings that they endure.¹⁰⁸ Because stateless women are more at risk of being put into these situations, the state must prioritize combating statelessness as a way to combat gender-based violence and promote economic development.

IV. SUGGESTIONS AND CONCLUSION

A. Suggested Remedies for Combating Discriminatory Nationality Laws

Women facing discrimination in nationality are affected in every aspect of their life but primarily in the inability to gain identifying documentation, enter the formal workforce, and gain a proper education. In regions where the cycle of statelessness continues to plague communities in severe economic despair, it is necessary to include women in the discussion of development. As a continuously globalizing economy grows, excluding a portion of capable talents restricts the efficiency and productivity of nations. In order to ensure women their individual right to nationality, combat gender-discrimination, and promote economic development, several remedies are outlined below:

1. Eliminate Gender-Discriminating Nationality Laws

All states with reservations to CEDAW's Article 9 must be shamed by the global community and addressed by the CEDAW Committee. It is necessary to eliminate discriminatory nationality laws in order to promote economic development. Not only are gender-discriminating nationality laws a violation of international law, they also permit gender-based violence on a greater scale and subject women to unfair and wrongful treatment. It is necessary that gender-discriminating nationality laws are completely eliminated by all states, and especially by those states party to CEDAW. These violations of international law must be made public and states must take a hardline approach in ensuring these fundamental rights to all people. This means that states must withdraw their reservations to Article 9 of CEDAW and draft new legislation permitting equal nationality opportunities for men and women within their borders.

2. Reform Citizenship Registries

Citizenship registries in areas with high levels of displaced people should be made to account for stateless people within their borders. A procedure should be created to break the cycle of statelessness and issue identification documents to people who have none. This could open the floodgates to an expenditure of necessary resources by governments in these areas, but allowing

¹⁰⁶ *Id.*

¹⁰⁷ Andrew R. Morrison & Maria Beatriz Orlando, *The Costs and Impacts of Gender-Based Violence in Developing Countries: Methodological Considerations and New Evidence*, WORLD BANK, 10 (2004), <http://siteresources.worldbank.org/INTGENDER/Resources/costsandimpactsofgbv.pdf>.

¹⁰⁸ *Id.* at 26.

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statelessness to continue at the high levels it does is too dangerous to women because of the international human rights violations it provokes. In the long run, permitting stateless people to become citizens will only benefit the state itself. It is the international community's responsibility to combat statelessness together, so all governments should be aiding in this process. If governments are having trouble finding support to create such agency, an international fund should be created to help these states invest in forming this type of department. If state governments are completely unwilling to take the responsibility of stateless people within their borders, a UN agency should be created to issue identifying documents to stateless people.

3. *Promote Women's Access to Education and Employment*

Legislatures must address discriminatory practices, which dramatically affect women on a disparaging level. Because the majority of the world's stateless individuals are women, and because statelessness creates an inability to attend proper educational institutions or labor force training, as well as increases the risk for sexual-based violence, it is necessary that women be able to obtain flourishing livelihoods. Displaced women are restricted from a number of human rights protections because of their status as stateless people and also because of their status as women. Gender inequality magnifies the burden of statelessness by making women even more vulnerable to gender-specific violations of human rights.¹⁰⁹ Training programs that do not require citizenship should be put into place in all states in order to adequately train and educate stateless women, who will then be able to better contribute to the global economy. Rather than being forced to resort to prostitution or other black market employment, stateless women should be trained in fields that will allow them to move ahead and benefit the community at large. It is in every nation's best economic interest to promote education and employment for all women in their borders.

4. *Strengthen Economic Capacity by Empowering Women*

Studies often refer to capable working people as "human capital" in the global economy.¹¹⁰ Misallocations in human capital distort effective use of all talents possessed in the world.¹¹¹ By promoting education and employment for women, gender inequality in other fields will also be addressed. Once women are permitted to enter certain occupations, other women will be empowered to enter the labor force as well. By empowering all women, including stateless women, to participate in the global community, the economic capacity for growth will presumably increase.

In order for women to contribute to the economy, gender-discrimination must be eliminated. Women with higher education and or in the workforce are given greater power in their families.

¹⁰⁹ Alice Edwards (External Consultant to the U.N.), *Displacement, Statelessness, and Questions of Gender Equality and the Convention on the Elimination of All Forms of Discrimination Against Women* 1, 64 (2009), http://www2.ohchr.org/english/bodies/cedaw/docs/UNHCR_CEDAW_Background_Paper4.pdf.

¹¹⁰ Chang-Tai Hsieh et al., *The Allocation of Talent and U.S. Economic Growth*, NBER, 4 (Jan. 2013), <http://www.nber.org/papers/w18693.pdf>.

¹¹¹ *Id.*

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For women with children, this gives them the opportunity to harmonize childcare responsibilities with their partners or significant others. By keeping women out of the public sphere, their skills, talents, and overall intelligence will go to waste. Women must be empowered and given better opportunities in the public sphere in order to strengthen economic capacity.

B. Concluding Remarks

The Human Rights Council recently passed Resolution A/HRC/20/2, “The Right to a Nationality – Women and Children,” asserting that nationality laws are still a major concern. Nearly 80 years ago, the UDHR first called for *everyone* to have a right to nationality. Since the initial declaration from the global community, nearly 60 countries continue to employ discriminatory nationality practices. Addressing discriminatory nationality laws is addressing a core fundamental human right. Nationality is more than basic identification — it is *the right to have rights*. Having nationality is having the ability to exist in the world today. Although citizenship is often taken for granted, it is citizenship that allows people to own property, get married, work, travel, define their personal identity and live an ordinary life.

In addition, the majority of women facing statelessness are at risk for elevated levels of gender-based violence. As a result, many women are unable to achieve any economic autonomy, which makes them incapable of sustaining meaningful employment. It is necessary that governments prioritize eliminating discrimination in nationality laws in order to ensure equality, promote women’s access to education and labor, and strengthen economic capacity. Stateless people can no longer be left voiceless; it is a communal duty to ensure that they are accepted and may participate in our international community in order to reach equality. There is still much to do in combating these issues, but there is hope in the movement of our global community.